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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re the Marriage of JAMES E. and  
CANDYCE M. STRAUS.

JAMES E. STRAUS,

Appellant,

v.

CANDYCE M. STRAUS,

Respondent.

D052826

(Super. Ct. No. D437521)

APPEAL from an order of the Superior Court of San Diego County, Joel R.

Wohlfeil, Judge. Affirmed; motion for sanctions on appeal denied.

James E. Straus appeals from the trial court's order imposing sanctions under Family Code section 271 (section 271) in a proceeding brought by his former spouse, Candyce M. Straus,<sup>1</sup> to obtain division of a retirement account, obtain a judgment for

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<sup>1</sup> For the purposes of clarity, we refer to the parties by their first names and intend no disrespect.

arrearages with respect to that account, and obtain a vocational examination. As we will explain, we conclude that the trial court did not abuse its discretion in imposing sanctions. Accordingly we affirm the trial court's order.

Candyce brings a motion for sanctions under California Rule of Court, rule 8.276,<sup>2</sup> requesting that we award the attorney fees she incurred on appeal. The motion lacks merit, and we deny it.

## I

### FACTUAL AND PROCEDURAL BACKGROUND

The judgment of dissolution of James and Candyce's 22-year marriage was entered in 1999. The judgment of dissolution stated that the court "shall reserve jurisdiction to divide the community property interest of the parties in [James's] Federal Civil Service Retirement System benefits using the time formula set forth in *In Re Marriage of Brown* [(1976) 15 Cal. 3d 838]."

On September 29, 2006, James filed an application for an order modifying spousal support. In support, James alleged that Candyce's income had substantially increased and her housing expenses had substantially decreased since the last spousal support order. Along with his application, James filed an income and expense declaration which indicated that he had a change in income due to "[e]arly retirement with partial pension until [age] 65." The income and expense declaration stated that the previous month's pension or retirement fund payment to James was \$4,259, and it attached a "Notice of

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<sup>2</sup> All further rule references are to the California Rules of Court.

Annuity Adjustment" indicating that James would receive a payment for the month of September 2006 of \$4,175 after income tax withholding. The statement did not indicate when James had retired and did not provide further details about James's retirement benefits.

The income and expense declaration put Candyce on notice that James had retired and was receiving retirement benefits. Thus, on November 13, 2006, counsel for Candyce wrote to counsel for James seeking information about James's pension plan and the date on which James began receiving benefits. Observing that it would be necessary to determine Candyce's interest in the pension plan and to divide the benefits accordingly, counsel for Candyce asked that James advise her as to his position on division of the retirement benefits. She stated that if the parties could not come to an agreement, it would be necessary for Candyce to file a motion regarding division of the benefits. In the letter, counsel for Candyce also inquired as to the reasons for James's early retirement so that she could evaluate whether a vocational evaluation should be requested.

When counsel for James did not respond, counsel for Candyce wrote him another letter, dated November 30, 2006. She requested that James "immediately agree to the signing of a qualified domestic relations order (QDRO) dividing the Civil Service benefits according to the time rule" and that James "immediately produce the previously requested documentation . . . so that the QDRO may be drafted." Counsel for Candyce stated that if James did not respond by the next day, ". . . I will commence preparing discovery to be forwarded to your client and will be filing a motion to enforce the provision of the Judgment regarding the Civil Service Plan and appointing an elisor to

sign the QDRO." The letter also put James on notice that Candyce would be seeking attorney fees due to James's failure to cooperate.

On December 5, 2006, Candyce filed a motion seeking (1) a vocational examination of James; (2) a judgment for arrears for Candyce's share of James's retirement benefits; and (3) the appointment of an elisor to sign a QDRO to be forwarded to the administrator of James's retirement plan. In the motion, Candyce also requested that the court award sanctions under section 271 because by failing to respond to informal requests to cooperate, James made it necessary for Candyce to serve discovery and file her motion. In a declaration accompanying her motion, Candyce stated that James had not responded to either letter sent by her attorney requesting information about James's retirement benefits and James's reasons for early retirement. She further stated that she was not aware that James took an early retirement until she received his application for modification of spousal support, and she did not know when James started collecting retirement benefits.

Candyce propounded discovery in early December 2006 regarding James's employment status, retirement and receipt of retirement benefits. James responded on January 5, 2007, indicating among other things that he had retired on August 4, 2006, and had begun receiving retirement benefits from the federal Civil Service Retirement System on approximately September 1, 2006.

In January 2007, the parties entered into a stipulation and order for the division of James's retirement benefits. The stipulation was drafted by James's attorney and was signed by Candyce on January 5, 2007, i.e., the same day that James responded to

Candyce's discovery. The stipulated order was filed with the trial court on January 29, 2007.

After the issue concerning the division of the retirement benefits was resolved, the hearing on the remaining issues — i.e., James's application to modify spousal support; and Candyce's application for a judgment of arrears, a vocational evaluation and sanctions — was continued several times. Ultimately, a hearing was held on February 5, 2008. At the hearing, the parties presented a stipulation concerning all of the outstanding issues except for Candyce's request for sanctions.<sup>3</sup>

At the hearing, the trial court granted Candyce's request for sanctions, ordering James to pay \$3,000 of the attorney fees incurred by Candyce in the litigation. The trial court explained that sanctions were warranted under section 271 because it "perceive[d] a nexus between [Candyce] having had to file the motion and now obtaining the relief that she should not otherwise have had to file a motion to secure."

James appeals from the order awarding sanctions.

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<sup>3</sup> Specifically, the parties stipulated (1) to reduce spousal support to zero effective October 1, 2006; (2) to cooperate in calculating the amount of arrears owed to Candyce from the retirement benefits retroactive to the date when James started receiving those benefits; and (3) to withdraw Candyce's request for a vocational evaluation.

## II

### DISCUSSION

#### A. *James's Appeal of the Trial Court's Order Imposing Sanctions*

##### 1. *Standard of Review*

"A sanction order under . . . section 271 is reviewed under the abuse of discretion standard. "[T]he trial court's order will be overturned only if, considering all the evidence viewed most favorably in support of its order, no judge could reasonably make the order.'" [Citation.] 'In reviewing such an award, we must indulge all reasonable inferences to uphold the court's order.'" (*In re Marriage of Feldman* (2007) 153 Cal.App.4th 1470, 1478.) "We review any findings of fact that formed the basis for the award of sanctions under a substantial evidence standard of review." (*Id.* at p. 1479.)

##### 2. *The Trial Court Did Not Abuse Its Discretion*

Section 271, subdivision (a) provides in relevant part that "the court may base an award of attorney's fees and costs on the extent to which the conduct of each party or attorney furthers or frustrates the policy of the law to promote settlement of litigation and, where possible, to reduce the cost of litigation by encouraging cooperation between the parties and attorneys. An award of attorney's fees and costs pursuant to this section is in the nature of a sanction."<sup>4</sup> "Section 271, subdivision (a) authorizes sanctions to

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<sup>4</sup> Section 271, subdivision (a) also provides: "In making an award pursuant to this section, the court shall take into consideration all evidence concerning the parties' incomes, assets, and liabilities. The court shall not impose a sanction pursuant to this section that imposes an unreasonable financial burden on the party against whom the sanction is imposed. In order to obtain an award under this section, the party requesting

advance the policy of promoting settlement of litigation and encouraging cooperation of the litigants" and "does not require any actual injury." (*In re Marriage of Feldman*, *supra*, 153 Cal.App.4th at pp. 1479-1480, italics omitted.)

Here, the trial court determined that James frustrated the policies of promoting cooperation, settlement of litigation and reduction of litigation costs because his conduct made it necessary for Candyce to file a motion to obtain his cooperation. We thus examine whether substantial evidence supports the factual findings implicit in this determination, and, ultimately, whether the trial court abused its discretion in imposing sanctions for this reason.

Substantial evidence supports a finding that Candyce was forced by James's conduct to file a motion and serve discovery so that he would cooperate with her requests for information about his retirement and participate in obtaining a division of the retirement benefits. First, despite having begun receiving retirement benefits in September 2006 and despite filing a motion for modification of spousal support, James did not voluntarily share with Candyce the details about his retirement benefits or take steps to obtain an order dividing the benefits. Next, counsel for Candyce wrote two letters to James's attorney seeking immediate access to information about the retirement benefits and the reason for James's retirement, but James did not reply, even when warned that Candyce would file a motion and serve discovery to enforce her rights if

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an award of attorney's fees and costs is not required to demonstrate any financial need for the award." These provisions are not the focus of James's appeal.

James did not cooperate. Only after Candyce filed her motion and served discovery did James begin to cooperate by providing the information that Candyce requested and by participating in obtaining an order dividing the retirement benefits. These facts support a finding that James's conduct frustrated the policies of promoting cooperation, settlement of litigation and reduction of litigation costs that underlie section 271, because Candyce was forced to file a motion and serve discovery to obtain James's cooperation. Because section 271 allows the imposition of sanctions when a party's conduct frustrates its underlying policies, the trial court was within its discretion to impose sanctions on James.<sup>5</sup>

James argues that even if we conclude that the trial court did not abuse its discretion in awarding sanctions, we should rule that the amount of sanctions was excessive. As factual background to this argument, we note that on October 19, 2007, Candyce's attorney submitted a declaration stating that Candyce had incurred \$3,193.21 to litigate the issues before the court. There is no other information in the record detailing the nature of the legal work performed as a basis for the \$3,193.21 in fees. At

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<sup>5</sup> James argues that *In re Marriage of Aninger* (1990) 220 Cal.App.3d 230 establishes that "[n]ot responding to two letters to begin settlement discussions is expressly not a basis for [section] 271 sanctions." We disagree. *Aninger* does not set a bright-line rule establishing that the failure to respond to two letters will never warrant the imposition of sanctions under section 271. Instead, *Aninger* dealt with former Civil Code section 4370.5, and held that under the unique facts of that case — which are not replicated here — the husband's failure to respond to two letters inviting settlement discussions did not warrant an award of attorney fees under former Civil Code section 4370.5. (*In re Marriage of Aninger*, at pp. 244-246.)



the February 5, 2008 hearing, the trial court ordered James to pay \$3,000 of Candyce's legal fees.

James argues that "[a]ny sanctionable conduct was completed when the stipulation to divide the retirement plan was filed" in January 2007, but that "[t]here was another one year of continuances and correspondence and general litigation on the spousal support motion." James contends that, therefore, the amount of the sanctions award should be substantially reduced.

James's argument fails because a sanctions award under section 271 need not "be limited to the cost to the other side resulting from the bad conduct." (*In re Marriage of Quay* (1993) 18 Cal.App.4th 961, 970 [addressing former Civ. Code, § 4370.6, the substantively identical predecessor statute to § 271].) Thus, the trial court had the authority under section 271 to order that James pay Candyce's attorney fees even if some of those fees may not have been incurred as a result of James's failure to cooperate with Candyce.

B. *Candyce's Motion for Attorney Fees on Appeal*

Candyce has filed a motion pursuant to rule 8.276, requesting that we sanction James by requiring him to pay the attorney fees she has incurred on appeal. Rule 8.276(a) provides:

"On motion of a party or its own motion, a Court of Appeal may impose sanctions, including the award or denial of costs under rule 8.278, on a party or an attorney for:

"(1) Taking a frivolous appeal or appealing solely to cause delay;

"(2) Including in the record any matter not reasonably material to the appeal's determination;

"(3) Filing a frivolous motion; or

"(4) Committing any other unreasonable violation of these rules."

Candyce argues that sanctions are warranted (1) because James's appeal is frivolous, and (2) because James violated rule 8.120 by allegedly failing to lodge the reporter's transcript of the February 5, 2008 hearing.

We conclude that sanctions are not warranted based on either of the grounds identified by Candyce. First, James's appeal is not frivolous. Although we have affirmed the trial court's order under our deferential abuse of discretion standard of review, it was not unreasonable or in bad faith for James to argue that because of the limited nature of his failure to cooperate, sanctions were not warranted. Second, there is no factual basis for Candyce's second ground for requesting sanctions. The appellate record does contain the reporter's transcript from the February 5, 2008 hearing. Thus, Candyce's motion is denied.

## DISPOSITION

The trial court's order imposing sanctions under Family Code section 271 is affirmed. Candyce's motion for an award of attorney fees under California Rules of Court, rule 8.276 is denied. Candyce is entitled to costs on appeal.

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IRION, J.

WE CONCUR:

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NARES, Acting P. J.

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AARON, J.